Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304 of the	)	
Telecommunications Act of 1996	)	CS Docket No. 97-80
	)	
Commercial Availability of Navigation Devices	)	
	)	
Compatibility Between Cable Systems and	)	PP Docket No. 00-67
Consumer Electronics Equipment	)	

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

As with the *Further Notice*, the Commission's goal in resolving the pending petitions for reconsideration in this proceeding should be to adopt flexible, balanced, technology-neutral policies and procedures that will promote a vibrant competitive market for innovative and appealing digital cable television products and related devices while assuring appropriate protection for cable networks and content. This approach will best promote the Commission's overarching goals of spurring the transition to digital television and ensuring the commercial availability of navigation devices at retail. The Commission should refrain from adopting overly rigid requirements that will stifle innovation and deprive consumers of access to the kinds of products and services that will encourage the transition to digital media.

Accordingly, Microsoft Corporation (Microsoft), Hewlett-Packard Corporation (HP) and Apple Computer, Inc. (Apple) ask the Commission to evaluate carefully the revised testing rules proposed by the National Cable & Telecommunications Association (NCTA) and the Consumer Electronics Association (CEA) and to modify the proposed rules as necessary to ensure that devices employing a variety of architectures and features can be made available to consumers as Digital Cable Ready (DCR) devices. In addition, the Commission should affirm

that manufacturers have flexibility in developing and deploying digital output and content protection technologies for use with Unidirectional Digital Cable Products. The Commission should not mandate that such technologies be converted into industry standards, or even licensed for use by others, after being implemented and deployed in the market.

I. THE TESTING AND CERTIFICATION REQUIREMENTS FOR UNIDIRECTIONAL DIGITAL CABLE PRODUCTS SHOULD BE FLEXIBLE ENOUGH TO ACCOMMODATE DEVICES EMPLOYING INNOVATIVE ARCHITECTURES AND FEATURES.

As noted in the IT Industry Comments on the *Further Notice*, the current *Plug-and-Play* rules impose rigid testing and certification requirements on DCR devices that could limit the ability of manufacturers to develop innovative product designs and architectures (including component products).[1] Accordingly, the IT Industry Comments urged the Commission to eliminate the requirement that all DCR products be tested against the specific 2003 PICS Proforma testing guidelines developed by NCTA and CEA.[2] Rather than supporting a move in this direction, the NCTA and CEA oppositions to petitions for reconsideration instead propose layering an additional requirement (albeit one incorporating some limited flexibility) on top of the current testing and certification requirements applicable to DCR products.[3] Under the so-called "improved testing rules," manufacturers seeking to market a device as Digital Cable Ready or otherwise able to receive a POD/CableCARD would need to demonstrate that the

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[1] Comments of Microsoft Corp., Hewlett-Packard Corp., Dell, Inc., and Apple Computer, Inc., CS Docket No. 97-80, PP Docket No. 00-67, at 14-15 (Feb. 13, 2004, *erratum* Feb. 26, 2004) (IT Industry Comments).

[2] *Id.* at 15-16.

[3] National Cable & Telecommunications Association Opposition to Petitions for Reconsideration and Notice of Joint Proposal for Improved Testing Rules, CS Docket No. 97-80, PP Docket No. 00-67, at 16-18 (Mar. 10, 2004); Consumer Electronics Association and Consumer Electronics Retailers Coalition Opposition to Petition for Reconsideration, CS Docket No. 97-80, PP Docket No. 00-67, at 22-26 (Mar. 10, 2004) (CEA Opposition).

device satisfied the substantive requirements of the PICS Proforma when tested using the testing method set forth in the Acceptance Testing Plan (ATP) (or an Equivalent ATP yielding the same results as the ATP).[4] This hardly responds to the concerns expressed in the IT Industry Comments.

To afford manufacturers greater freedom to develop, test and certify a diverse array of devices incorporating the POD/CableCARD, the Commission should consider modifying all of the testing requirements to introduce additional flexibility. For example, rather than requiring all devices to satisfy the specific PICS standards, the Commission could permit manufacturers to demonstrate, pursuant to an Equivalent ATP, that a device (including a device consisting of a combination of components) satisfies an "Equivalent PICS" showing compliance with all the requirements of Section 15.123(b) of the Commission's rules. At a minimum, the Commission should carefully evaluate the proposed testing rules with an eye towards ensuring that any testing and certification requirements adopted are appropriate not just for single-purpose consumer electronics devices but for general purpose and open platform devices like the personal computer (and related peripherals).

II. STANDARDS PROCESSES ARE APPROPRIATE FOR SOME, BUT NOT ALL, TECHNOLOGIES USED WITH UNIDIRECTIONAL DIGITAL CABLE PRODUCTS.

Although we have not taken a position on the petition for reconsideration of Genesis Microchip, we do want to comment on certain CEA statements made in connection with

[4] We agree with CEA that NCTA's demands for stricter testing requirements seem grounded in arguments that challenge the security of the POD-Host interface itself. We also agree that "[t]here is no basis in the record [for NCTA] to question the security of the interface or to tie its security to the identity of the test lab used." CEA Opposition at 25-26. Finally, we believe that NCTA also has no basis to tie the security of the POD-Host interface to compliance with overly rigid testing standards and methods.

CEA's opposition to the Genesis petition. CEA argues that all technologies involved in the Commission's broad regulation of navigation devices need not be the product of standards processes.[5] We agree with this statement. CEA goes on, however, to say that "while it may be preferable that standards activity precede deployment, this is not always possible or even advisable. ***What is more important is that appropriate standards activity follow deployment as expeditiously as is possible***."[6] It is unclear in connection with what technologies and under what circumstances CEA believes such standards activity should follow technology deployment. For the avoidance of doubt, however, we want to be certain that CEA is not advocating a requirement that all digital output and content protection technologies approved for use with Unidirectional Digital Cable Products be subjected to standards processes after receiving approval.

We, like CEA, support standards activities in appropriate circumstances. However, we do not believe that the Commission should adopt rules or policies in this proceeding that would subject all technologies used in Unidirectional Digital Cable Products to standards activities and processes. Specifically, the Commission should not require that digital output and content protection technologies approved for use with Unidirectional Digital Cable Products be subjected to standards processes "as expeditiously as is possible" after deployment. CEA itself acknowledges that "some technical elements – particularly involving encryption and authentication – are based on secrets that cannot themselves be subject to open standardization activity."[7] This principle is especially applicable to content protection technologies. In addition, some developers of output and/or content protection technologies for use in Unidirectional

[5] CEA Opposition at 19.

[6] CEA Opposition at 20 (emphasis in original).

[7] CEA Opposition at 20.

Digital Cable Products may want to – and should have the right to – keep their technologies proprietary for use in their own products. The mere fact that devices receive cable programming does not justify requiring that the technologies used therein be licensed to others and/or subject to standards processes either before or after deployment in the market. Indeed, eliminating the option of developing proprietary digital output and content protection technologies could reduce the incentives to develop such technologies and slow innovation in the market.

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In accordance with the foregoing, we urge the Commission to adopt flexible testing and certification requirements that will encourage the deployment of a diverse array of DCR devices. Manufacturers and technology developers should also have flexibility in deciding whether or not to license or standardize their digital output and content protection technologies.

Respectfully submitted,

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